

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DISTRICT**

JOSE MARIA DECASTRO)	Case No. 22-cv-00204
)	
<i>Plaintiff,</i>)	
)	
vs.)	
)	
PAM WAGNER, et al.)	
)	
<i>Defendants.</i>)	
_____)	

PLAINTIFF’S MOTION TO CORRECT

Plaintiff Jose Maria DeCastro (“Plaintiff”), pursuant to Fed. R. Civ. P. Rule 60(a), respectfully moves this Court to correct an error in its Clerk’s Judgement entered on August 3, 2023 (ECF No. 48).

In support of this motion, Plaintiff submits a Memorandum of Points and Authorities, filed concurrently, and incorporated here, records in this action, on the oral argument of counsel, if any, and on such other and further evidence as the Court might deem proper.

INTRODUCTION

On September 15, 2022, Plaintiff filed a First Amended Complaint (“FAC”) (ECF No. 20) in this action, including a jury trial demand.

In September, 2023, Defendants filed pre-trial dispositive motions (ECF Nos. 21 and 23).

On January 13, 2023, after being granted leave to extend his response deadline, Plaintiff filed an opposition (“Opposition”) (ECF No. 32) to the Defendants’ dispositive motions.

On August 3, 2023, this Court entered an order (“Order”) granting the Defendants dispositive motions, dismissing the FAC.

On August 3, 2023, this Court entered a Clerk's Judgment ("Judgment") (ECF No. 48) indicating "This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered."

That is incorrect. There was no trial or hearing on the matters.

Plaintiff brings this instant motion to correct the Court's record.

POINTS AND AUTHORITIES

A. This Court has authority to make corrections. Pursuant to Fed. R. Civ. P. Rule 60(a), "The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice." Here, there is a clerical mistake in a judgment, and this Court has authority to correct it.

The Judgment says "DECISION BY COURT: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered."

There was no trial or hearing in this action.

The Judgment should say something more similar to "DECISION BY COURT: This action was decided by the Court without a trial or hearing."

B. Duty to correct judgments. The Supreme Court has determined that courts have "the duty to correct judgments which contain clerical errors[.]" *Am. TRUCKING Ass'ns, INC. v. FRISCO*, 358 U.S. 133, 145, 79 S. Ct. 170, 177 (1958). Here, where this is a clerical error, besides having authority to correct the error, this Court has a duty to correct it since this is a judgment.

CONCLUSION

Plaintiff respectfully for the Clerk's Judgement to be corrected where it indicates that the action came to trial and that the issues were heard before the decision was rendered.

DATED: August 17, 2023

Respectfully submitted,

/s/ Jose Maria DeCastro
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Jose Maria DeCastro